

Curtis Sobel (CS-0964)
Sobel & Kelly, P.C.
Attorneys for Defendants
464 New York Avenue, Suite 100
Huntington, New York 11743
(631) 549-4677

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSS BIERNICK,

Plaintiff(s),

- against -

WHITE CASTLE SYSTEM, INC., and WHITE
CASTLE SYTEM EMPLOYEES TRUST,

Defendant(s).
-----X

Civil Action No.

08-CV-6768 (LAK)

**VERIFIED ANSWER
TO COMPLAINT**

The defendant, WHITE CASTLE SYSTEM, INC., s/h/a WHITE CASTLE SYSTEM INC. and WHITE CASTLE SYSTEM EMPLOYEES TRUST, by its attorneys, SOBEL & KELLY, P.C., answering the Complaint of the plaintiff, ROSS BIERNICK, alleges upon information and belief:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph(s) "1", "2", "6", "11", "13", "15" and "21" of the Complaint.

SECOND: Defendant denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph(s) "9" of the Complaint,

except admits that on June 23, 2005, and at all times hereinafter mentioned, a restaurant located at the aforesaid premises was operated by Defendant WHITE CASTLE.

THIRD: Defendant denies, upon information and belief, each and every allegation contained in paragraph(s) "3", "19" and "20" of the Complaint, and refers all questions of law to this Court.

FOURTH: Defendant denies, upon information and belief, each and every allegation contained in paragraph(s) "5", "7", "8", "10", "12", "14", "16", "17", "18" and "22 through "30", all inclusive, of the Complaint .

**AS AND FOR A FIRST AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

FIFTH: That if the plaintiff sustained the injuries and damages alleged in the Complaint, the same were wholly caused by the culpable conduct of and/or assumption of the risk of the plaintiff and the defendant is entitled to judgment dismissing the Complaint.

That if the plaintiff sustained the injuries and damages alleged in the Complaint, the same were caused, if not in whole, then in part, by the culpable conduct and/or assumption of the risk of the plaintiff and the defendant is entitled to judgment assessing and fixing the degree to which the culpable conduct of the plaintiff contributed to the said injuries and damages and the proportion to which such damages shall be diminished thereby.

**AS AND FOR A SECOND AFFIRMATIVE
DEFENSE PURSUANT TO ARTICLE 16**

SIXTH: In the event that the plaintiffs recover any judgment against this defendant, then this defendant demands that any such judgment be diminished in accordance with Article 16 of the CPLR and more particularly Section 1601 thereof.

**AS AND FOR A THIRD AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

SEVENTH: If any damages are recoverable against said answering defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiffs have or shall receive from any available collateral source.

WHEREFORE, defendant, WHITE CASTLE SYSTEM, INC. s/h/a WHITE CASTLE SYSTEM INC. and WHITE CASTLE SYSTEM EMPLOYEES TRUST, demands judgment dismissing the Complaint in its entirety, or in the alternative, for judgment diminishing the damages recoverable by the plaintiff(s) herein, in proportion to the culpable conduct and negligence attributable to the plaintiff(s), together with the costs and disbursement of this action.

Dated: Huntington, New York
 August 13, 2008

Yours, etc.,



CURTIS SOBEL (CS-0964)
Attorneys for Defendant
WHITE CASTLE SYSTEM, INC.
s/h/a WHITE CASTLE SYSTEM, INC. and
WHITE CASTLE SYSTEM EMPLOYEES TRUST
464 New York Avenue, Suite 100
Huntington, New York 11743
631/549-4677
File No.: 10164-08.cs

TO: DAVID KATZ & ASSOCIATES, LLP
Attorneys for Plaintiff
ROSS BIERNICK
116 East 16th Street, 6th Floor
New York New York 10003
(212) 228-2528

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSS BIERNICK,

Plaintiff(s),

- against -

WHITE CASTLE SYSTEM, INC., and WHITE
CASTLE SYTEM EMPLOYEES TRUST,
Defendant(s).
-----X

Civil Action No.
08-CV-6768 (LAK)

VERIFICATION

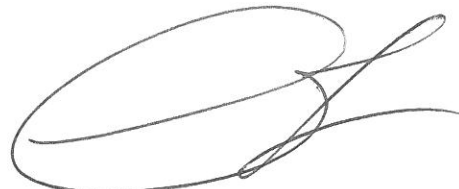
STATE OF NEW YORK ss: COUNTY OF SUFFOLK

I, CURTIS SOBEL, an attorney admitted to practice in the Courts of New York State, state that I am the attorney for the defendant in the within action; I have read the foregoing ANSWER TO COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matter I believe it to be true. The reason this verification is made by me and not by defendant, is that the defendants' principal place of business is in a County other than the County wherein I maintain my office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: Contents of file which constitutes attorney's work product.

I affirm that the foregoing statements are true, under penalties of perjury.

Dated: Huntington, New York
 August 13, 2008



CURTIS SOBEL (CS-0964)

DECLARATION OF SERVICE BY MAIL

STATE OF NEW YORK)

ss.:

COUNTY OF SUFFOLK)

LuANN DeSIMONE, hereby declares, pursuant to 28 U.S.C., Section 1746 and Local Civil Rule 1.10 of this Court, that I am not a party to the action; I am over 18 years of age and reside at Middle Island, New York 11953

On 08/19 /2008, I served the within **VERIFIED ANSWER TO COMPLAINT** by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to each of the following persons at the last known address set forth after each name:

TO: DAVID KATZ & ASSOCIATES, LLP
116 East 16th Street, 6th Floor
New York New York 10003

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2008


LuANN DeSIMONE